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Federal Communications Commission
Office of Secretary

BEFORE THE

Federal Communications Commission

In re)
)
GERARD A. TURRO) MM Docket No. 97-122
)
)
For Renewal of License) File Nos. BRFT-970129YC
for FM Translator Stations) BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.) DOCKET FILE COPY ORIGINAL
)
)
Order to Show Cause Why the Construction)
Permit for FM Radio Station WJUX(FM),)
Monticello, NY, Should Not Be Revoked)

To: Administrative Law Judge
Arthur I. Steinberg

REPLY TO OPPOSITION TO MOTION TO ENLARGE ISSUES

Universal Broadcasting of New York, Inc. ("Universal"), by its attorneys and pursuant to Section 1.229 of the Commission's Rules, hereby replies to Gerard A. Turro's ("Turro") May 23, 1997 opposition to Universal's motion to enlarge issues against him for ex parte violations. In support of its reply, Universal sets forth the following.

1. Universal alleges that Turro has violated Sections 1.1208 and 1.1210 of the Commission's ex parte rules by soliciting a third party, i.e., Senator Robert G. Torricelli and Congressman Steve Rothman, to call and/or write the Commission on his behalf to make a

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presentation as to the merits of his above-captioned FM translator renewal applications. Universal's motion was not based on any direct evidence but, rather, on circumstantial evidence and, on that basis, both the Mass Media Bureau (the "Bureau") and Turro oppose Universal's motion.

2. Such circumstantial evidence, however, must be viewed in the context of a pattern of political involvement on Turro's behalf over the years. For example, in 1993, when Turro was attempting to obtain authority from the Bureau to originate programming over W276AQ and increase that translator's power to better serve Bergen County, Congresswoman Marge Roukema wrote a letter to Bureau Chief Roy J. Stewart on behalf of her "constituent, William Schubert," the same William Schubert who is Bergen County Executive Schubert, in support of Turro's proposal. A copy of Mr. Stewart's response to Congresswoman Roukema is set forth as Attachment A.

3. On June 18, 1996, while Turro was attempting to obtain Bureau approval of an application to assign his translator licenses to a trust to be administered by Stephen M. Gansler, a long-time Turro friend, for the benefit of Turro,^{2/} a letter (see Attachment B) in support of such proposed assignment was written to Bureau Chief Stewart (and served on Universal) on the signatures of five members of the U.S. House of Representatives, Marge Roukema (R, NJ, 5th District), Benjamin A. Gilman (R, NY, 19th District), Robert G. Torricelli (D, NJ, 9th District and now a U.S. Senator) and Maurice D. Hinchey (D, NY, 26th District). Also during the pendency of the Gansler application, the Chairman's office and the Commission staff were subjected to a letter

^{2/} The Gansler application, which was subsequently dismissed by Turro, was opposed by Universal and, was, therefore, a restricted proceeding to which the ex parte rules applied.

writing/call-in campaign on Turro's behalf.**/ Even though Turro may not be directly linked to these past political contacts, nevertheless, there has been a consistent pattern over time of political pressure put on the Commission to advance his interests; accordingly, the April 28, 1997 letter of Senator Torricelli and Congressman Rothman and the May 23, 1997 letter of Senator Torricelli to Chairman Reed Hundt should not be viewed as isolated instances but, rather, they are part of a pattern of continuing efforts to manipulate the Commission's processes for the benefit of Turro.

4. With respect to the April 28, 1997 live broadcast of Senator Torricelli, Congressman Rothman and Bergen County Executive William Schuber, urging that WJUX/W276AQ listeners write the Commission in support of Turro, while Universal was able to record only the last three minutes of this program, Turro, who produced and originated the program, did not provide a transcript of the entire program as part of his opposition; rather, Turro merely asserts that a member of Senator Torricelli's staff requested the program time to discuss the situation of Turro, d/b/a Jukebox Radio, and that he, Turro, made such time available without question and had no knowledge or prior understanding as to the substance of the broadcast. If you believe this, there is a bridge in Brooklyn I want to sell you.

5. There comes a point in time when Turro, based on his knowledge of past political contacts on his behalf, must be deemed to have implicitly consented to such contacts and, by making program time available, to have indirectly, if not directly, participated in the solicitation of improper third party ex parte contacts by the general public and elected officials. Significantly, Turro has

**/ The Bureau can verify to the Presiding Officer that it received approximately 1,300 letters to the Chairman and the Commission staff and approximately 400 telephone calls in response to an on-air request of Turro, the tapes of which the Bureau also has.

made no effort whatsoever to distance himself from the Torricelli/Rothman characterization of the charges specified in the Hearing Designation Order ("HDO") as being nothing more than "minor and of a technical nature" and "bureaucratic machinations within the FCC."

6. Moreover, while the HDO specifically states at footnote 13, that the Commission agrees with the Bureau that the Bureau's November 19, 1991 declaratory ruling to Turro was not so broad as to authorize the relationship between Turro's translators and WJUX, which is not at issue in this proceeding, the Torricelli/Rothman letter simply ignores that finding and incredibly asserts that the Bureau, without knowledge of the identity of the primary station or other key facts, had previously approved Turro's scheme whereby he programs WJUX to principally serve Bergen County which is wholly outside the service area of WJUX. Turro's silence as to that myth must be deemed as complicitous.

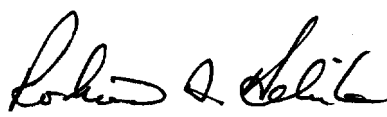
7. There is one other myth that needs to be put to rest. Turro's opposition, at footnote 2, contends that Universal's February 7, 1997 letter to Senator Daniel Patrick Moynihan, requesting a status inquiry as to Universal's February 15, 1995 complaint against Turro, was an impermissible ex parte contact. In February 1997, Universal's complaint had not matured into a restricted proceeding; indeed, but for an Order of the United States Court of Appeals for the District of Columbia Circuit issued on April 3, 1997 directing the Commission to respond to Universal's petition for writ of mandamus, it is arguable that Universal's complaint against Turro would still be pending before the Commission. In any event, Senator Moynihan's April 16, 1997 letter to the Commission was nothing more than a permissible status inquiry and was initiated in advance of this matter becoming a restricted proceeding. For Turro to suggest that there is no difference between Senator Moynihan's pre-designation status request and Senator Torricelli's post-designation letter

discussing the substance of the very matters at issue in this adjudicatory hearing is simply disingenuous.

8. For the reasons set forth above, the Presiding Officer should enlarge the issues against Turro as requested by Universal to determine what involvement Turro may have had in soliciting improper and illegal ex parte contacts to Chairman Reed Hundt on his behalf.

Respectfully submitted

UNIVERSAL BROADCASTING OF NEW YORK, INC.

By: 

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Its Attorneys

June 2, 1997

ATTACHMENT A

PINK

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

10 FEB 1994

IN REPLY REFER TO:
CN9400119

Honorable Marge Roukema
House of Representatives
2244 Rayburn House Office Building
Washington, D.C. 20515-3005

Dear Congresswoman Roukema:

Thank you for your letter on behalf of your constituent, William Schuber. You urge that we consider Mr. Schuber's suggestions for strengthening the signal and programming capabilities of FM translator Station W276AQ, Fort Lee, New Jersey.

Station W276AQ (103.1 MHz) rebroadcasts the signal of noncommercial educational FM Station WJUX, Franklin Lakes, New Jersey (88.7 MHz). Both stations serve communities within Bergen County, New Jersey. However, it appears that some Bergen County residents are unable to receive either signal. Mr. Schuber concludes that the signal of WJUX cannot be improved without creating a negative impact to other signals. He suggests that this problem can be corrected by increasing the signal strength of W276AQ. He states that an increase to either 110 watts with a nondirectional antenna, or 1000 watts with a directional antenna will enable the translator to reach all areas of Bergen County with a strong, clear signal, without interfering with the signals of other radio stations in the area.

A preliminary analysis of Mr. Schuber's suggested power increase for Station W276AQ shows that it is not feasible. Our engineering study reveals that a 110-watt non-directional translator would cause interference to a number of co- and first-adjacent channel stations in the area served by W276AQ. We do not have sufficient information before us to consider the 1000-watt directional translator proposal. However, we note that such a proposal would require a waiver of our rules, which limit FM translators to a maximum of 250 watts. Moreover, it appears that any increase in the power authorized for W276AQ would likely cause interference to other authorized broadcast stations. Thus, we anticipate that we would not be able to grant such a waiver request.

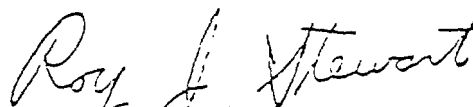
Mr. Schuber also seeks permission to originate programming on W276AQ. In this regard, the Commission has already considered a request by the licensee of W276AQ for a waiver of the Commission's rules which prohibit program origination by translators. That waiver request was most recently addressed in the context of the Commission's rule making proceeding which revised its rules governing the FM translator service. Therein, the Commission found that grant of the requested waiver would cause a fundamental change in our overall allocation of aural broadcast stations and that this change would be inconsistent with the primary purpose of FM translator stations as a secondary rebroadcast service. Hence, the W276AQ waiver request was denied. The licensee did not seek reconsideration of that Commission determination and the denial became final on January 4, 1991. It should be noted that, pursuant to our rules, translators are permitted to originate transmissions of emergency warnings of imminent danger.

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Honorable Marge Roukema

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Over the past ten years we have also considered a number of means to improve the signal of W276AQ. Unfortunately, the congested frequency situation in the New York area has precluded any significant alteration of that station's signal. We note, however, that the signal of a full service FM broadcast station may be rebroadcast by more than one FM translator. Thus, it may be possible for WJUX to utilize additional FM translator stations to serve those areas of Bergen County that are not being adequately served by either Station WJUX or W276AQ. This, in fact, is the very role translators are designed to fill. Moreover, since WJUX is a non-commercial educational licensee, it may own and operate translator stations in the reserved band (88.1 MHz to 91.9 MHz) and may deliver its signal to these translators by any means possible. Thus, WJUX would be able to deliver its signal by microwave, telephone lines, fiber optics or by any other means necessary to assure receipt of a strong signal to such commonly owned translators. This combination of multiple translators and alternative signal delivery may facilitate the transmission of the WJUX programming to underserved areas of Bergen County.

Sincerely,


Roy J. Stewart, Chief
Mass Media Bureau

ATTACHMENT B

Congress of the United States
Washington, DC 20515

June 18, 1996

The Honorable Roy Stewart
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Mr. Stewart:

We are writing to ask that the translators which rebroadcast WJUX be allowed to remain on the air, while the FCC is in the process of reviewing a proposal from Mr. Gerard Turro (licensee of FM Translators W276AQ & W232AL) to bring the operation of these translators into compliance with your letter of April 5, 1996,

We continue to believe that the translators are bringing valuable news, traffic, weather and other important information to roughly one million northern New Jersey residents as well as residents of Sullivan county. This programming is fulfilling an important niche for many residents of the greater northern New Jersey/Sullivan county area that other radio stations refuse to acknowledge.

We hope that the FCC will take prompt and favorable action upon Mr. Turro's proposal, and that in the meantime, WJUX and its associated translators will remain in operation.

Thank you, in advance, for your time and attention to this very important matter.

Sincerely yours,

Marge Roukema

R. A. T. M.

Sen. Gilman

Shiley

W. J. R. J.

CERTIFICATE OF SERVICE

I, Don Green, hereby certify that true copies of the foregoing letter have been served upon the following via first-class, postage prepaid, U.S. mail, this 27th day of June 1996:

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CERTIFICATE OF SERVICE

I, Jovana M. Cooke, a secretary in the law firm of Cohn and Marks, hereby certify that I have, this 2nd day of June, 1997, sent by U.S. mail, postage prepaid, or by hand delivery, as indicated, the foregoing **REPLY TO OPPOSITION TO MOTION TO ENLARGE ISSUES** to the following:

The Honorable Arthur I. Steinberg */
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Jovana M. Cooke